

Issue: Administrative Review of Hearing Officer's Decision in Case No. 9745;
Ruling Date: August 1, 2012; Ruling No. 2013-3396; Agency: Department of
Corrections; Outcome: No Ruling – Untimely.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

ADMINISTRATIVE REVIEW RULING

In the matter of the Department of Corrections
Ruling Number 2013-3396
August 1, 2012

The agency has requested that the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management administratively review the most recent reconsidered hearing decision in Case Number 9745. For the reasons set forth below, the agency's request is untimely.

FACTS

The most recent decision by the hearing officer in Case Number 9745 was the Second Reconsideration Decision issued July 6, 2012.¹ EDR received the agency's current request for review of that decision on July 26, 2012. The agency's advocate states that she did not receive the Second Reconsideration Decision until July 24, 2012. The agency's advocate had changed her address and the decision was sent to her former address. However, the Second Reconsideration Decision was also sent directly to the agency at its central human resources office. Although the agency employee to whom the decision was sent was on vacation, the Second Reconsideration Decision was received at the agency on July 10, 2012.

DISCUSSION

The Grievance Procedure Manual provides that "all requests for review must be made in writing, and *received* by the administrative reviewer, within 15 calendar days of the date of the original hearing decision."² In the case of appeals of a reconsideration decision, the same rule applies: a request for review must be received within 15 calendar days of the issuance of the decision.³ EDR received the agency's request for review on July 26, 2012, three days beyond the 15 calendar day period following the July 6, 2012 Second Reconsideration Decision. As such, the request is untimely.

¹ Second Reconsideration Decision of Hearing Officer, Case No. 9745, July 6, 2012 ("Second Reconsideration Decision").

² *Grievance Procedure Manual* § 7.2(a).

³ *See, e.g.*, EDR Ruling Nos. 2008-2055, 2008-2056.

Furthermore, the agency has presented insufficient evidence of a “just cause” for the delay.⁴ While it is unfortunate that the agency’s advocate did not receive the Second Reconsideration Decision until after the appeal period lapsed, the fact it was sent to a prior address could have been cured by advising the hearing officer of her change of address. More importantly, the agency actually received the decision on July 10, 2012. Although the agency employee to whom that mailing was directed was on vacation, it is not apparent why the employee’s mail was not monitored in her absence. Where the time period to respond begins when the decision is issued, a party cannot extend the time to respond by either refusing or failing to open a mailing that provides notice of the decision. A party does so at its own risk.

Based on the foregoing, we cannot find that the agency did not have notice of the issuance of the Second Reconsideration Decision. The mailing was received by the agency directly. Accordingly, EDR finds that the agency’s request for administrative review in Case Number 9745 is untimely and there is no just cause for the delay.

APPEAL RIGHTS

A hearing officer’s decision becomes a final hearing decision when the 15 calendar day period for filing requests for administrative review has expired and neither party has filed such a request or once all timely requests for review have been decided.⁵ Because the agency’s request for review was untimely, the hearing decision in Case Number 9745 became a final hearing decision after the 15 calendar day period expired on July 23, 2012. The parties have 30 calendar days from that date to appeal the decision to the circuit court in the jurisdiction in which the grievance arose. The basis of any such appeal must be that the final decision was contradictory to law.⁶



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⁴ “Just cause” is defined as a “reason sufficiently compelling to excuse not taking a required action in the grievance process.” *Grievance Procedure Manual* § 9.

⁵ See *Grievance Procedure Manual* § 7.2(d).

⁶ Va. Code § 2.2-3006(B); *Grievance Procedure Manual* § 7.3(a).